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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,680	11/29/2000	Ryuzo Hosotani	YANAGIHARA	7997

7590 08/18/2003

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EXAMINER
WHITE, EVERETT NMN

ART UNIT	PAPER NUMBER
1623	

DATE MAILED: 08/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/701,680	HOSOTANI ET AL.	
	Examiner	Art Unit	
	EVERETT WHITE	1623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *None*.

   Claim(s) objected to: *None*.

   Claim(s) rejected: *12-15*.

   Claim(s) withdrawn from consideration: *None*.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

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TECHNOLOGY CENTER 1600

Continuation of 5. does NOT place the application in condition for allowance because: of the reasons set forth in the rejection of the claims under 35 U.S.C. 103 in the Final Rejection of the claims mailed February 26, 2003. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicants further argue that in order to produce the aggregates of a hydrophobic group-containing polysaccharide according to the present invention, specific process steps are required, which include the starting hydrophobic group-containing polysaccharide must be swollen with water in order to form an aqueous dispersion and then the swollen dispersion treated using a high pressure homogenizer by causing the dispersion to be discharged under a pressure of from 9.8 to 490 MPa through an orifice into a chamber to obtain a monodispersed dispersion of aggregates of 10-30 nanometer diameter of the polysaccharide molecules in which 3-20 molecules are held under association with each other. This argument is not persuasive because the Lander patent set forth the process steps disclosed in the instant claims, as previously indicated, that involves dissolving polysaccharides in water and then size reducing the polysaccharides by passing the polysaccharides through a high pressure orifice using a mechanical homogenizer, which produces a reduced sized, monodisperse polysaccharide (see column 3, 2nd paragraph) as instantly claimed. See Example 1 of the Lander patent whereby the polysaccharide solution is subjected to a high pressure homogenization at pressures ranging from 3,000 to 14,000 psi, which falls within the pressure range set forth in the instant claims. The Lander patent uses a high-pressure homogenizer that is analogous to the high-pressure homogenizer used in the instant claims. The combination of the Lander patent with the other cited references (i.e., the Shiku et al patent or the Macromolecules reference in view of the Lander patent or the Okumura et al patent) shows that the other characteristics disclosed in the claims (i.e., the recited particle size, polysaccharide, formula) are not distinct and would be obvious under 35 U.S.C. 103. Accordingly, the rejection of Claims 12-15 under 35 U.S.C. 103 as being unpatentable over the Shiku et al patent or the Macromolecules reference in view of the Lander patent or the Okumura et al patent is maintained for the reasons of record.

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